



FILED

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SUPREME COURT
COURT OF APPEALS

No. 2009-CA-00785

**IN THE SUPREME COURT OF
MISSISSIPPI**

STEVEN J. BELLINO, II,
Appellant

v.

MARGARET BELLINO,
Appellee

**Appeal from the Chancery Court of
Forrest County, Mississippi**

BRIEF FOR APPELLANT

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CERTIFICATE OF INTERESTED PERSONS

Steven J. Bellino, Jr.

Appellant

v.

NO. 2009-CA-00785

Margaret Bellino

Appellee

The undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the judges of this Court may evaluate possible disqualification or recusal.

- | | | |
|----|-----------------------------|-------------------------|
| 1. | Steven J. Bellino, Jr. | Appellant |
| 2. | Christina Bellino | Appellant |
| 3. | Margaret Bellino | Appellee |
| 4. | Brandon L. Brooks, Esq. | Attorney for Appellant |
| 5. | Hon. Glenn White | Attorney for Appellee |
| 6. | Hon. Sam McHard | Attorney for Appellee |
| 7. | Hon. William Gault, Jr. | Attorney for AG Edwards |
| 8. | Hon. James H.C. Thomas, Jr. | Trial Judge |

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ORAL ARGUMENT NOT REQUESTED

The Appellants, STEPHEN J. BELLINO II and CHRISTINA BELLINO,
respectfully do not request oral argument.

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STATEMENT OF THE CASE

A. PROCEEDINGS BELOW

This case is an appeal from the ruling of the Chancery Court of Forrest County, Mississippi granting Judgment against the Appellants on April 13, 2009.

B. STATEMENT OF THE CASE

Stephen J. Bellino (hereinafter "Steve") and Margaret C. Bellino were married on January 13, 1974 in Rapides Parish, Louisiana. Two children were born unto their marriage, Stephen J. Bellino II and Christina Bellino. Steve filed for divorce from Margaret on August 25, 2004. At the time of the filing, both children were emancipated and self-supporting. Throughout the divorce proceedings, Steve was represented by the Hon. Allen Flowers and Margaret was represented by Thomas T. Buchanan. On or about March 30, 2006, Steve was granted a divorce from Margaret C. Bellino on the grounds of uncondoned adultery.

In his Memorandum opinion, the chancellor stated, "Plaintiff is gainfully employed as manager of a Wal-Mart store where he nets a monthly salary of about \$3,000.00 (Exhibit 1) but is paid an annual bonus, which, in 2005 was about \$125,000.00. The parties lived a life style based on the salary plus the bonus, paying accumulated debt with the bonus annually. Additionally, Plaintiff has \$204,000.00 in a profit sharing 401K plan (Exhibit 15) and Wal-Mart stock valued at \$146,000.00 which was purchased with funds received by Plaintiff as an inheritance from his

father (Exhibit 18). The parties jointly own a home valued at \$290,000.00 with a mortgage indebtedness of \$210,000.00, leaving an equitable interest of \$80,000.00. They have four vehicles, all debt free, two of which Plaintiff drives, valued at \$17,700.00, and two driven by Defendant, valued at \$14,000.00. Defendant has a motor home in her name valued at \$8,000.00 by Plaintiff, jewelry and furs she values at \$13,000.00 and household goods including a porcelain and antique collection described in testimony as being valued at \$40,000.00 by Defendant.” (R.E. # 3)

The Findings and Conclusions of Law of the chancellor specifically stated, “The Court finds the marital property of the parties consists of the home equity, the vehicles, motor home, 401K account , porcelain and antiques, totaling \$363,700.00 to be equitable divided between the parties. Plaintiff’s Wal-Mart stock, purchased with his inheritance proceeds and Defendant’s jewelry and furs are not considered marital properties.” Furthermore, Judge Thomas equitably divided the marital property as follows, “Defendant is awarded fee simple title to the home and its contents valued at \$80,000.00; the porcelain and antiques valued at \$40,000.00; her automobiles worth \$14,000.00; the motor home valued at \$8,000.00; and a portion of the Plaintiff’s 401K in the amount of \$39,850.00 to total an award of \$181,850.00. Any tax ramifications of withdrawals from the 401K shall be equally borne by the parties. Plaintiff is awarded his vehicles valued at \$17,700.00, the personal property in his possession currently, and the balance of his 401K account after deducting the

\$39,850.00 awarded to the Defendant.” (R.E. #5)

On or about May 2, 2006, the aforementioned provisions and findings by the chancellor were incorporated into the Final Judgment of Divorce. Again, in the Final Judgment the AG Edwards account was referred to as “wal-mart stock”. When the chancellor referred to the “wal-mart stock account” in his Memorandum Opinion, he referenced to trial exhibit #18, which was an AG Edwards account statement. Shortly thereafter, Steve’s counsel realized the clerical error in the Memorandum Opinion and Final Judgment, and proceeded to file a Motion to Alter or Amend Judgment on May 15, 2006, stating in paragraph 6 of said Motion, “Steve has been advised by managers of his A.G. Edwards accounts that the Judgment is unclear as to what funds are now owned solely by him. Steve has thus been unable to access funds that are listed as joint accounts. The Judgment addresses these issues but in a manner that A.G. Edwards finds insufficient to allow Steve access to his money. The Judgment should thus be modified to clarify this issue.” (R.E. #11-12)

The Motion to Alter or Amend Judgment was set to be heard on Tuesday, June 27, 2006. Steve tragically took his own life on June 18, 2006. Steve’s two children and only heirs-at-law, Stephen J. Bellino II and Christina Bellino retained the services of the Hon. Brandon L. Brooks to open Steve’s estate. Upon learning that the hearing scheduled for June 27, counsel for the Estate filed an Entry of Appearance of Counsel on behalf of the Estate in the divorce action as well as a Motion for Continuance June

26, 2006. (R.E. #17-18) Counsel for the estate was told by the chancellor's court administrator that the Continuance Motion could be heard telephonically, so counsel went to the chancellor's office where a telephonic conference was held between the chancellor, Hon. Brandon L. Brooks, Hon. Allen Flowers, and Hon. Thomas Buchanan. During the conference, Mr. Flowers stated that he would not be going forward with Steve's Motion now that he was deceased, and Mr. Buchanan stated that he had been contacted by his client, to which he informed her that alimony ended at death, and it was now an estate matter. Shortly thereafter, counsel for the estate contacted A.G. Edwards and was informed of the clerical mistake and that A.G. Edwards would not be releasing the funds into the Estate until there was an Amended Order specifically mentioning the A. G. Edwards account. Counsel for the Estate prepared said Amended Order and presented it to the chancellor to be executed.

Upon inquiring whether there would be a rights of survivorship problem, A.G. Edwards stated that would not be the case since the account was a Tenants in Common account managed and maintained in Louisiana since its inception.

Approximately one year from Steve's death, Margaret C. Bellino filed in the divorce action, her Combined Motion to Alter or Amend Judgment, Motion for Relief from Judgment and, and Petition to Modify. In paragraph 5 of said Petition, Margaret actually admits that the A. G. Edwards account was "owned as tenants in common." Margaret petitioned the court to amend or modify the judgment because she

“received only three monthly payments of the ‘periodic alimony of \$2,500’ which was awarded permanently. Likewise Margaret Bellino received only three months of the three year award of rehabilitative alimony of \$1,500 per month. Margaret Bellino is now unable to pay reasonable living expenses.” (R.E. #19-21)

Appellee filed a Motion for Summary Judgment stating that there was no genuine issue of material fact as to the ownership of the A.G. Edwards account. Appellee’s summary judgment motion was subsequently denied. Appellants filed their Rule 60(a) motion to correct the clerical mistake in the Memorandum Opinion and Final Judgment where the A.G. Edwards account was labeled as “Wal-Mart stock”. The trial court granted Appellants Rule 60(a) Motion stating that the Wal-Mart stock found not to be a marital asset at the time of the divorce should have been the A. G. Edwards funds. However, the trial court went on to say that the ownership of the funds will be determined by the contract agreement which was the Joint Account Agreement, which the trial court stated had created a joint tenancy with rights of survivorship to Margaret Bellino. It is from this position of the Order and Summary Judgment Appellants now appeal.

SUMMARY OF THE ARGUMENT

The trial court was in error by allowing the ownership of the AG Edwards funds to be directed by the Joint Account Agreement when the same trial court earlier held that those funds were owned solely by Steve Bellino since they were not considered

marital property. Furthermore, Margaret Bellino should be estopped from making a claim of the AG Edwards account because of the court's earlier ruling in the divorce action, and that allowing Margaret Bellino to now have ownership of the funds would be against equitable distribution. The AG Edwards account was operated as a Tenants in Common account, and should be vested into the Estate of Stephen J. Bellino.

ARGUMENT

I. The AGE Joint Account Agreement Created a Tenants in Common Account Between Stephen and Margaret Bellino.

The AGE joint Account Agreement was signed in the state of Louisiana in 1995, and that is where the account remained at Stephen's death in 2006. The account was managed by Mr. Lucien Branch, whom was the manager of the Monroe, Louisiana office of AG Edwards. The couple never moved the AG Edwards account outside of Louisiana. Mississippi law recognizes a joint tenancy account with rights of survivorship. This Court has stated that, "a provision for survivorship is strong evidence that a joint tenancy was created." *Vaughn v. Vaughn* 118 So.2d 620,622 (Miss. 1960). This Court has further noted that "where joint tenancy with survivorship clauses exist in the name of the account itself, in the signature cards, or in a joint account agreement, the courts should enforce them according to their tenor." *In re Estate of Cannon*, 733 So.2d 245, 250 (Miss. 1999). In the Joint Account Agreement of Steve and Margaret Bellino there was no such

provision for survivorship. The Account Agreement specifically stated that accounts held in Louisiana would be deemed as tenants in common accounts.

Above the parties' signature line of the AG Edwards Account Agreement there is a provision which states:

MARRIED RESIDENTS OF COMMUNITY PROPERTY STATES

The undersigned acknowledge that although the laws of community property states recognize the right of spouses to agree to hold property in joint tenancy with rights of survivorship, they have been advised to consult their own counsel as Edwards cannot guarantee that the joint tenancy created by this agreement will be recognized by any state.

In Louisiana, joint tenancy with rights of survivorship may require court approval. Lacking proper documents demonstrating that the applicable laws of Louisiana have been satisfied, joint accounts in Louisiana *will be carried only as tenants in common*. Emphasis added. (R.E. #90-91)

During the marriage of Steve and Margaret Bellino, Steve received approximately one-half of \$329, 555.37 (or \$164,777.68) in inheritance proceeds from his father. Steve used this inheritance to open a stock account with AG Edwards. The account was opened and maintained in Monroe Louisiana. Steve testified in his divorce deposition that the inheritance money was placed in a mutual fund account which he identified on Margaret's 8.05 Financial Declaration as a New Perspective Mutual Fund of \$33,000.00; a growth fund of \$46,000.00; Fundamental Investors of \$45,000.00; and AIM Equity of \$12,000.00. These exact funds are listed on the A.G. Edwards account statement which was maintained in

Louisiana and opened with Steve's inheritance proceeds. (R.E. #44, 69-74)

Under Mississippi law the chancellor has the authority to divest Margaret Bellino's interest in the A. G. Edwards account regardless of the contractual agreement. And the chancellor did this with the court's original Memorandum Opinion and Final Judgment in the divorce action. The chancellor even granted Appellant's Rule 60(a) Motion to Correct a Clerical Mistake in Judgment, and held that "the Wal-Mart Stock of \$140,000.00 value which was not considered a marital asset at the time of the divorce and thus was Stephen J. Bellino's separate property, should have been the A. G. Edwards funds. The Rule 60(a) motion is then granted to correct that judgment to so reflect the ownership of those funds."

The Order and Summary Judgment went further to say that "present ownership of those funds will now be determined by the contractual arrangement Stephen J. Bellino directed with documents created at A. G. Edwards, as ownership was at his disposal subsequent to the divorce. The last apparent direction was the Joint Account Agreement creating a joint tenancy with rights of survivorship to Margaret Bellino, who at his death became the owner by operation of law. The Order Dispersing Funds in Cause Number 04-0482-GN-TH is set aside, *sua sponte*, and those funds are directed to be promptly placed in the registry of the court with the Chancery Clerk". (R.E. #36-37)

This action by the trial court (directing the A.G. Edwards funds now to

Margaret) is in complete contradiction of what the trial court ordered in the divorce action. The A.G. Edwards funds should have never been subject to the contractual agreement because the A. G. Edwards account was awarded solely to Steve in the divorce action as it was determined not to be marital property.

In the case at hand, the account was opened and maintained in Louisiana, the account agreement expressly states that the account would be held as tenants in common unless there was express written court approval stating otherwise (neither Steve nor Margaret Bellino sought this), and the monthly AG Edwards account statements sent to Stephen and Margaret maintained the heading, "Ten Com".
(R.E. #34)

II. Margaret Bellino's Claim to the A.G. Edwards Account is Barred by Judicial Estoppel.

The doctrine of judicial estoppel is a safeguard in the judicial process which prevents a party from attempting an unfair advantage over another party. This Court has noted that the doctrine of judicial estoppel "precludes a party from asserting a position, benefitting from that position, and then, when it becomes more convenient or profitable, retreating from that position later in the litigation." *Doskins v. Allred*, 849 So.2d 151, 155 (Miss. 2003). This opportunistic flip flopping is precisely what Margaret Bellino has done by at first admitting that the A. G. Edwards account was held as Tenants in Common, and at a later more convenient time, claiming that the account is joint tenants with rights of

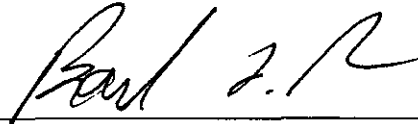
survivorship.

In the Memorandum Opinion and Final Judgment of Divorce, the chancellor declared that the AG Edwards account was not to be considered marital property because the account was opened with funds that Steve inherited from his father. Both parties testified to this in their respective depositions. Had the clerical mistake not been made, Steve would have been able to access those funds immediately after the divorce. He attempted to do this, but AG Edwards felt that the language in the Memorandum and Final Judgment was not satisfactory. Steve filed a Motion to Alter or Amend the Judgment so that he could correct this error, but his tragic death came before the matter was to be heard by the court. All the parties were aware of the AG Edwards account. Margaret Bellino even listed them on her Financial Declaration, but she never made a claim to the funds until well after Steve's death, and even then she admitted that the account was a tenants in common account. Therefore, she should be estopped from making a claim to the AG Edwards funds.

CONCLUSION

For the foregoing reasons, Stephen J. Bellino II and Christina Bellino respectfully requests of this Court to overturn the trial court's ruling that the AG Edwards account belongs to Margaret C. Bellino pursuant to the contractual agreement with AG Edwards, and hold that the AG Edwards funds belongs to the Estate of Stephen J. Bellino, as which was originally held at the trial court.

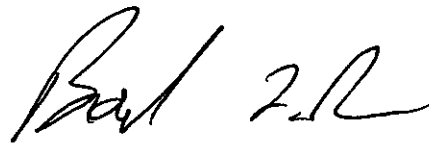
Respectfully submitted,



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CERTIFICATE OF SERVICE

I, BRANDON L. BROOKS, certify that today, January 4, 2010, a copy of the brief for appellant, a copy of the record excerpts, and the official record in this case, consisting of one volumes of the pleadings, one volume of transcript, and one volume of supplemental record, were served upon Hon. Judge James Thomas, Jr. Chancery Court Judge, P.O. Box 807, Hattiesburg, MS 39403; Hon. Glenn White, Attorney at Law, P.O. Box 672, Petal, MS 39465; Hon. Sam McHard, Attorney at Law, 32 Millbranch Road, Suite 50, Hattiesburg, MS 39402, and Hon. William Gault, Jr., Attorney at Law, P.O. Box 12314, Jackson, MS 39236.



BRANDON L. BROOKS